IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 315 of 2006
In
COMPANY APPLICATION No. 300 of 2003
IN
COMPANY PETITION No.79 of 1989
WITH
COMPANY APPLICATION No. 300 of 2003
IN
COMPANY PETITION No. 79 of 1989
With
COMPANY APPLICATION No. 205 of 1994
IN
COMPANY PETITION No.79 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMIN TRADERS - Applicant(s)
Versus
TEXTILE LABOUR ASSOCIATION & 4 - Respondent(s)

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Appearance :

MR S N SOPARKAR, LD. SENIOR ADVOCATE FOR MITUL K SHELAT for Applicant(s) : 1,
MR BC DAVE for Respondent(s) : 1,
MR DS VASAVADA for Respondent(s) : 1,
MR MRUGESH JANI for Respondent(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 2,
MR RM DESAI for Official Liquidator,Respondent(s) : 2,

NOTICE SERVED BY DS for Respondent(s) : 3 - 4.
None for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 30/10/2006

CAV JUDGMENT

1. So far as Company Application No.315 of 2006 is concerned, it is filed by M/s. Amin Traders, original respondent no.3 with a prayer to extend the order of status-quo until the applications seeking for eviction of the applicant are heard and decided by this Court. Company Application No.205 of 1994 is filed by the Central Bank of India, one of the Secured Creditors with a prayer to direct the original respondent no.3 to hand over and vacant the peaceful possession of the premises in question to the Official Liquidator. The above application came to be heard by the learned Single Judge on 31st January, 1996 and it was found that Shri Babubhai Mansuri, was in possession of the premises since last many years and he has

also paid rents regularly upto a particular period and if said Shri Mansuri in arrears of rend, he was directed to pay the rent as early as possible and the company application came to be disposed of.

Company Application No.300 of 2003 is filed by the Textile Labour Association in the year January, 2003 with a prayer to direct the Official Liquidator to take steps to evict the respondents from the premises of Vijaya Mills Ltd., the company (in liquidation) and interalia praying for direction to sale committee to dispose of land immediately thereafter. Upon issuance of notice, M/s. Amin Traders, original respondent no.3 contended that in view of order dated 31st January, 1996 passed in Company Application No.204 of 1994, possession of the property as a tenant is with him and rent is being paid regularly to the Official Liquidator, no order of eviction can be passed.

2. That various contentions and submissions were raised and learned Single Judge after hearing the parties, found that order dated 31st January, 1996 was obtained by suppressing certain vital materials facts and four reasons were given to reject the contentions of M/s.Amin Traders, original respondent no.3 that he is the tenant and it was found that rent receipt was not genuine and the documents relied upon by M/s.Amin Traders was concocted and forged and therefore order dated 22.02.2005 came to be passed in Company Application No.300 of 2003 in Company Petition No.79 of 1989, whereby the appellant was directed to vacant the disputed premises of the mills company (in liquidation).

3. That the above order of learned Single Judge was challenged before the Appellate Bench by filing O.J.Appeal No.11 of 2005 and by an order dated 23rd March, 2006 the above appeal came to be disposed of with certain directions and observations as contained in

Paras:15 and 16 of the above order which read as under:-

"**Para:15:-** In our considered opinion, such an exercise is not required to be entered into in view of the findings recorded by the learned single Judge. We would simply say that we are satisfied that the findings recorded by the learned single Judge do not call for any interference. However, we would make it clear that the findings recorded by the learned single Judge in this order would be binding on the parties for recall of the first order only and would not affect the merits of the matter or the rights of the parties. We also hereby observe that the findings recorded by the learned single Judge in the application submitted by the Textile Labour Association are only for the purposes of recalling the earlier order and nothing beyond that. The order passed by the learned single Judge though does not specifically say that the earlier order dated 31st January, 1996 stands recalled, but, in our considered opinion, the learned single Judge, by proceeding further in the matter, had made it clear that he was recalling the first order and was proceeding further in the matter. We make it clear that the Order dated 31st

January, 1996 stands recalled and all the parties are relegated to their original positions. The applications submitted by the Central Bank of India and the Textile Labour Association stand revived. The parties to the present *lis,* including the Official Liquidator, Textile Labour Association, secured creditors, purchasers and the present appellant, would be entitled to make their submissions before the learned Company Judge and if an occasion arises, they may ask for an opportunity to lead evidence. We make it clear that the learned single Judge, while proceeding with the matter or while making the inquiry, would not be influenced by the findings recorded in the order impugned, but, shall decide the matter afresh after giving due opportunity of hearing to the parties. If the learned single Judge is of the opinion that the claim lodged by the present appellant is genuine and *bona fide,* then, obviously he will have to pass orders in accordance with law and in case he finds that the documents, on which the claim of the appellant is based, are forged, concocted or manufactured, then, nothing would prevent the learned single Judge from making an order of eviction.

Para:16:- With the aforesaid clarifications and directions, the appeal stands disposed

of. The parties present in the Court shall appear before the learned single Judge on 30th March, 2006 for taking further instructions in the matter from the learned Company Judge. The parties are directed to maintain *status quo* may be made by the appellant to the learned single Judge."

In view of the above directions and observations, the learned advocates appearing for the respective parties have made their submissions on the basis of pleading contained in various applications and particularly Paras:13, 14, 15 and 16 of the order dated 23.03.2006 passed in O.J.Appeal No.11 of 2005.

4. The learned counsel appearing for the applicant of Company Application No.300 of 2003 mainly contended that respondent no.3 i.e. M/s.Amin Traders is not a tenant and is encroacher and some portion of the land of the company (in liquidation) is illegally occupied by him. Even his name does not figure in the statement of affairs filed by

the Ex-directors of the mill company and no documentary evidence is available about possession of the portion of the land as claimed by respondent no.3 as a tenant, prior to a period of order of winding up passed by this Court. It is stated that respondent no.3 was simply a contractor and some machines were placed after making some alteration below time keeper office and has misused some portion unauthorizedly. Even electricity connections were wrongly obtained from A.E.C. by him. Thus, it is stated that the prayer made in Company Application No.300 of 2003 may kindly be granted.

5. Shri D.S.Vasavda, learned advocate appearing for the applicant has further submitted that the order dated 22.02.2005 passed by the learned Single Judge, after scrutinizing the materials on record in the form of evidence of findings and conclusions arrived at, only lead to one conclusion that so-called rent receipt dated 12.01.1988 is a forged document

and no other view or conclusion is possible except what is found and upheld by the learned Single Judge on earlier occasion.

6. Shri Vasavda, learned advocate for the applicant has relied upon various documents submitted by the Official Liquidator, correspondences entered into between Ahmedabad Electricity Company and the Official Liquidator and status of Krishna Chawl which was situated at a distance of 1000 mtr from the gate of mills company. He has further contended that said Chawl was used as a residence of the employees of the erstwhile mill company and respondent no.3 was not an employee of mills company and therefore, he cannot be said to be a tenant.

7. Shri Vasavda, learned advocate for the applicant has further submitted that even in case of employees who were staying in Krishna Chawl this Court has not upheld the contention to continue, occupy and/or reside

at the said Chawl and the order of this Court is confirmed by the Apex Court in S.L.P No.8815 of 2006 and order dated 22.05.2006 by which judgment and order dated 29.04.2006 passed in O.J.Appeal No.44 of 2006 came to be confirmed.

Shri Vasavda, learned advocate for the applicant has further submitted that except the above disputed rent receipt, no other documentary evidence in the nature of contract or any lease-deed or even agreement is produced by which it can be said that the respondent no.3 is a tenant, and therefore according to him the respondent no.3 is to be evicted by exercising power under Section 446 of the Companies Act, 1956.

8. Shri S.N.Soparkar, learned Senior counsel appearing for respondent no.3 vehemently relied on the directions and observations of Appellate Bench contained in order dated 23.03.2006 passed in O.J.Appeal No.11 of 2005 and submitted that the parties are to be

given proper opportunity to lead evidence and thereafter to record a finding whether the appellant is liable to be evicted. Learned Counsel Shri Soparkar has relied upon specifically para:15 of the above order and submitted that if an occasion arise, the Appellate Bench has kept it open for the concerned party to lead an evidence and therefore only course left for this Court is to relegate and direct the Official Liquidator to file a suit for eviction before the competent court of law for enunciating proceedings of eviction if any or alternatively to call the concerned persons and witnesses after allowing them to lead evidence with regard to the subject matter of the application and then decide the same.

9. In support of his argument, Shri Soparkar, learned Senior Counsel has submitted that Textile Labour Association has no locus to prefer such application with the prayers contained in it. This application for

eviction is not by landlord or the Official Liquidator but by a busy body like that of Textile Labour Association, since one of the members of the Executive Committee of T.L.A. was denied some accommodation by respondent no.3, out of vengeance and with mala-fide intention this application is preferred.

10. Since issues involved in this application are complex in nature, leading evidence is must. Even reliance is placed on a statement made by one Mr.Brahmbhatt which goes to the route of the case, examination of rent receipt and even representative of T.L.A., who were present at the relevant point of time require to be brought before this Court. According to him, version of the Official Liquidator is consistent either with regard to the possession of respondent no.3 or the portion of land as a tenant and rent is being given regularly to the Official Liquidator and even applications forwarded by the Official Liquidator to the Ahmedabad

Electricity Company for getting electricity connections clearly indicate about lawful possession of respondent no.3 as a tenant. According to Shri S.N.Soparkar, learned advocate appearing for respondent no.3 has deposited rent upto August' 1994, he cannot be evicted without following due procedure of law, since he has acquired right as a tenant. Learned Counsel has also referred to the correspondences entered into between the Official Liquidator and the Ahmedabad Electricity Company by referring to letter dated 17.06.1994 and another letter of Official Liquidator dated 12.05.1994 and item no.66 which reflects about M/s. Amin Traders indicating possession of respondent no.3. He has also referred to another recording of minutes dated 03rd February, 1994 which indicate presence of the representative of T.L.A. And occupation of Shri Babubhai, owner of M/s.Amin Traders, respondent no.3 herein and performing the job at the mill premises.

Learned Senior Counsel appearing for respondent no.3 also pressed into service some evidence in the nature of F.I.R. Lodged before the concerned police station that the machineries were burnt during riots in the year 2002 and this fact is reflected from the F.I.R itself.

11. Learned Senior Counsel for respondent no.3, has submitted that so far as Official Liquidator is concerned, his stand is consistent, and later on it changes therefore when respondent no.3 is a tenant and the property is purchased on the basis of " As is where is basis" legal right has accrued in favour of respondent no.3 in view of the decision of the Apex Court reported in **AIR 1993 SC 1380.** He has also referred to Official Liquidator's reports dated 22.09.2003, 07.10.2003, 12.07.2004, 09.08.2004, 16.08.2004 and 02.09.1994 and submitted that even above reports are

perused, it is reflected that the Official Liquidator has accepted the respondent no.3 as a tenant.

Learned senior counsel appearing for respondent no.3 submitted that there are no pleadings for which the prayer of eviction is sought and in support of his argument that fraud is required to be proved, the learned counsel has placed reliance on **2004 (6) SCC 588** and for the submission that suspicion is not a substitute of proof, a decision reported in **1994 (1) SCC 502** was relied upon and for submission that some pleadings are not sufficient with regard to the burden of proof, learned senior counsel appearing for respondent no.3 has placed reliance on the decision reported in **2003 (8) SCC 745** and **123 Company Cases 566.** Lastly reliance was also placed on **2005(11) SCC 314** and submitted that on the basis of inconsistent pleadings, no findings with regard to the fraud can be

referred to. Shri Soparkar, learned Senior Counsel for respondent no.3 has also placed reliance on Order VI of Rule 4 of Code of Civil Procedure, 1908.

Thus, learned Senior counsel appearing on behalf of respondent no.3 has submitted that appropriate course for this Court is to make thorough inquiry by allowing parties to lead evidence documentary as well oral and also to permit the parties to examine, cross-examine witnesses concerned and thereafter to pass appropriate order in accordance with law.

12. Shri R.M.Desai, learned advocate appearing for the Official Liquidator submitted that except the so-called rent receipt, there is no other proof about tenancy, no contract or agreement even indicating prima-facie about relationship of tenant and landlord between respondent no.3 and the very well mill company from the surfaces on record and as

laid down by the Apex Court in decision reported in **125 Company Cases 765** under Section 446 of the Companies Act, 1956, this Court has jurisdiction to decide the issue. Learned advocate Shri Desai has further submitted that as required under the Companies Rules, list of tenant is to be given in Form No.57 while submitting statement of affairs and respondent no.3 is nothing but illegal occupier, an encroacher and other tenants are already evicted and appeal preferred by them is already rejected so as even S.L.P. against the decision in appeal is also dismissed.

13. Shri Navin K. Pahwa, learned advocate appearing for respondent no.1 has submitted that as per requirement of Section 456 of the Companies Act, 1956 all assets are under control of Official Liquidator and even prima-facie scrutiny of rent receipt dated 12.01.1988 do not fulfill the criteria laid down by the Apex Court in the decision

reported in **AIR 1962 SC 554** defining the rent and that even contract of respondent no.3 as a reeling contractor had come to an end long back and no liberty is given to the learned Single Judge by the Appellate Bench with regard to the permission of leading evidence for examining the witnesses and the same is clear from Para:15 of the above order. According to him, no other conclusion can be drawn from so-called rent receipt that respondent no.3 is not a tenant and no detailed scrutiny is required and the respondent no.3 may be evicted by exercising powers under Section 446 of the Companies Act, 1956.

14. Having heard the learned advocates appearing for the parties and on perusal of record of the case including the affidavits and counter affidavits filed by the respective parties and particularly directions and observations contained in oral judgment dated 23.03.2006 delivered in O.J.Appeal No.11 of 2005 by the

Division Bench of this Court, following facts emerge.

15. Having recorded the submissions of learned counsel appearing in above O.J.Appeal No.11 of 2005 in Company Application No.300 of 2003, in paras:11 and 12 the Division Bench has observed as under:-

"PARA:11:- So far as the powers of the Court in recalling the earlier orders are concerned, the same are unfettered. Under Order XLVII, the right of a party to ask for a review of the order is only on limited grounds. Under Order XLVII, Rule-1, read with Section 114 of the Code of Civil Procedure, an order can be recalled by the Court which had passed it if it is satisfied that there was discovery of new and important matter or evidence, which after the exercise of due diligence was not within the knowledge of the appellant or could not be produced by the appellant at the time when the order was passed, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason."

" **PARA:12:-** In a case where the Court is satisfied, on an application by the

applicant, that there, in fact, is discovery of new and important matter or evidence, which was not within the knowledge of the applicant, or which was though within his knowledge, but, could not be produced despite exercise of due diligence, or that there was some mistake or error apparent, on the allegations made by the party, the order can be recalled or reviewed, but, if the Court is of the opinion that there is an error or mistake apparent on the face of the record, or even otherwise there are sufficient reasons for recalling the said order, then, the Court would certainly recall the order. In the matter of ***Indian Bank Vs. M/s. Satyam Fibres*** *(supra),* the Supreme Court has observed, placing its reliance upon the judgment of Smit Vs. East Elloe Rural District Council 1956 AC 736, that the effect of fraud would normally be to vitiate any act or order. In the matter of Lazarus Estate Ltd. Vs. Beasley, (1956) 1 QB 702 at 712, Denning LJ said:

> " No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

The Supreme Court has further observed that "the judiciary in India also possesses inherent power, specially under Section 151

CPC to recall its judgment or order if it is obtained by Fraud on Court". The Court also observed that " since fraud affects the solemnity, regularly and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order".

Thus directions contained in the above impugned order of the Division Bench of evicting the appellant was not approved and it was stated that the Court was required to recall the first order and relegate the parties to their earlier position. However, further submission of Mr.Soparkar, learned senior advocate appearing for the appellant in the above case, that the Court should set

aside the order passed by the learned Single Judge and remit the matter to the learned Single Judge with a direction that he should give proper opportunities to the parties to lead evidence, hearing the parties properly and then record the findings that whether the first order was obtained by playing a fraud and whether the appellant is liable to be evicted was answered in Para:15 which reads as under:-

"**Para:15:-** In our considered opinion, such an exercise is not required to be entered into in view of the findings recorded by the learned single Judge. We would simply say that we are satisfied that the findings recorded by the learned single Judge do not call for any interference. However, we would make it clear that the findings recorded by the learned single Judge in this order would be binding on the parties for recall of the first order only and would not affect the merits of the matter or the rights of the parties. We also hereby observe that the findings recorded by the learned single Judge in the application submitted by the Textile Labour Association are only for the purposes

of recalling the earlier order and nothing beyond that. The order passed by the learned single Judge though does not specifically say that the earlier order dated 31st January, 1996 stands recalled, but, in our considered opinion, the learned single Judge, by proceeding further in the matter, had made it clear that he was recalling the first order and was proceeding further in the matter. We make it clear that the Order dated 31st January, 1996 stands recalled and all the parties are relegated to their original positions. The applications submitted by the Central Bank of India and the Textile Labour Association stand revived. The parties to the present *lis,* including the Official Liquidator, Textile Labour Association, secured creditors, purchasers and the present appellant, would be entitled to make their submissions before the learned Company Judge and if an occasion arises, they may ask for an opportunity to lead evidence. We make it clear that the learned single Judge, while proceeding with the matter or while making the inquiry, would not be influenced by the findings recorded in the order impugned, but, shall decide the matter afresh after giving due opportunity of hearing to the parties. If the learned single Judge is of the opinion that the claim lodged by the present

appellant is genuine and *bona fide,* then, obviously he will have to pass orders in accordance with law and in case he finds that the documents, on which the claim of the appellant is based, are forged, concocted or manufactured, then, nothing would prevent the learned single Judge from making an order of eviction.

Therefore, a window is kept open by the Division Bench to allow the parties, if asked for, to lead evidence only if an occasion arises and not otherwise.

16. In the backdrop of above directions and observations, the facts of this case is to be examined by this Court, the document annexed by respondent no.3 M/s.Amin Traders, rent receipt dated 12.01.1988 is at page-96 and no other material surfaces on record except the correspondence which has taken place between the Official Liquidator and the Ahmedabad Electrical Company for a particular period. The above rent receipt is also pertaining to the occupant of Krishna Chawl. Thus, Krishna Chawl also appears to have been constructed

or in existence for the residential purpose of the erstwhile employee of the company (in liquidation). The mill premise is about 1000 mtr away from Krishna Chawl and nowhere it transpires or surfaces that respondent no.3 was ever an employee of company (in liquidation). Thus, this weak piece of material does not lead anywhere for arriving at any conclusion and for which no further evidence is required to be led. It is also to be noted that in support of submission that respondent no.3 is a tenant and possesses a part of the property of the mill company, no document in the form of any agreement or even rent receipt prior to 1987 is produced by respondent no.3 except the receipt dated 12.01.1988. There is no need even to scrutinize genuineness of the above receipt, since the kind of above rent receipt cannot lead to any conclusion, that the respondent no.3 is a tenant and any benefits/rights accrued to him, require procedure of law to evict him, since in view of decision of

Hon'ble Supreme Court reported in **AIR 1962 SC 554** rent receipt cannot be a conclusive proof of tenancy in existence of agreement between landlord and tenant.

It also transpires that respondent no.3 at the most was only a reeling contractor and no other right accrued because such contract even if it is presumed subsisted, cannot be said to have existed for unlimited period and nothing is shown by way of documents, materials about existence of such unlimited contract.

It is to be noted that even minutes drawn on 3rd February, 1994 do not mention specifically about M/s. Amin Traders that he was occupying part of the mill premises as a tenant. On the contrary, certain blanks are noticed and the minutes reveal only the fact that the respondent no.3 was doing job work as a reeling contractor. Even reconnection of electricity supply to respondent no.3 do not

reflect that respondent was occupier of the part of the premise of the company as a tenant. That even the application for electricity connection applied by M/s. Amin Traders is for industrial purpose of cone winding on 28th April, 1994 i.e. After the date of winding up order of the company passed on 07.09.1993 and connection was granted on 17.11.1994, for which no permission of the Company Court was obtained.

That the statement of affairs submitted by Ex-directors containing list of tenants does not reflect name of the respondent as a tenant.

Thus I am prima-faciely not satisfied that any further detail scrutiny of the facts or materials on record to adjudicate the issues involved in this application.

Therefore, it is held that respondent no.3 was merely a reeling contractor and not a tenant of the part of the premises of the mill company and therefore I hereby direct the Official Liquidator to evict respondent

no.3 from the premises of the company (in liquidation) forthwith and if need arise, it will be open for the Official Liquidator to seek for assistance of the Police Authority for implementation of this direction.

17. That reference made by Shri Soparkar, learned senior counsel appearing for respondent no.3 to the decision reported in **AIR 1993 Supreme Court 1380** in the case of **Smt.Nirmala R.Bafna and Ors. Vs. Khandesh Spinning and Weaving Mills Co. Ltd. and another,** is not applicable in the present case, inasmuch as respondent no.3 cannot be said to be tenant on even prima-facie scrutiny of scant material produced by him. I have also commented on the rent receipt, and therefore, no further discussion in this regard is necessary. Besides, in the above case, landlord had consented for creation of subtenancy and in the backdrop of above facts, the Apex Court has held that eviction of the tenant requires proper procedure.

So far as decision reported in **(1994) 1 SCC 502** in the case of **Svenska Handelsbanken Vs. M/s. Indian Charge Chrome & Ors.** that to establish fraud adequate material is required and mere pleadings do not make strong case of prima-facie fraud. In the above case, fraud was alleged to invalidate the written agreement, was required to be proved by material and evidence. In the present case, inspite of repeated requests no written agreement about subsisting contract is produced and therefore it cannot be said that the pleadings are devoid of merit about material to establish fraud and it is based on mere suspicion. It is to be noted that no worth material exists even to prima-facie belief about some legal right accrued in favour of respondent no.3 as a tenant or an occupier of the part of mill premise by virtue of any agreement between the erstwhile mill management and respondent no.3.

Therefore also the above case in my humble submission is not helpful to the respondent no.3.

Reliance placed by learned Senior Advocate Shri Soparkar on the decision reported in (**2003) 8 SCC 745** in the case of **Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and another,** is on the different facts where documents produced were admitted by the signatories thereto and then marked as exhibits and therefore it was held no further burden to lead an additional evidence to prove the writing and therefore, execution survives and landlord had even not disputed his signatures and therefore no further burden of proof was casted on defendant to lead additional evidence to prove writing on the rent receipt and therefore execution. In the present case, the facts are different and the rent receipt does not inspire even an iota of confidence and it is borne out from the record that respondent no.3 was never an employee of mill

company (in liquidation) and therefore above case has no application in the facts of the present case.

Shri Soparkar, learned senior advocate has also placed reliance on the decision reported in (**2005) 11 SCC 314** in the case of **Sangramsinh P. Gaekwad and ors. Vs. Shantadevi P. Gaekwad (Dea) Through Lrs. And Ors.** about court must strictly go by pleadings made in the application in a case of oppression of certain facts and parties to the proceedings have to be examined and cross-examined with regard to their statements, the above observation of the Apex Court, according to this Court are based on terms of Section 145 of the Evidence Act and in the facts of that particular case, when statement made across the bar and certain statements were included by amending company petition for obtaining complete reliefs an order came to be passed. In the present case, no such situation arise and therefore the

above decision is of no help to the respondent no.3.

As I have stated earlier and as reported in **AIR 1962 SC 554** in the case of **H.S.Rikhy Vs. New Delhi Municipality,** it is clear that usage of word “rent” in receipt by itself cannot be a conclusive and final proof as a tenant. It further states that use of term 'rent' cannot preclude the landlord from pleadings that there was no relation of landlord and tenant.

That even in **125 Company Cases 765** in the case of **Official Liquidator of Aryodaya Spinning and Weaving Mills CO. Ltd. Vs. Charansingh Dhupsingh and Ors.** this Court held that powers u/S. 446 (i), (ii) and (iii) are specific and the Company Court can exercise the above powers without directing Official Liquidator to undergo rigmarole of filing separate suit etc.

Even otherwise also other tenants of very Krishna Chawl who had approached this Court being lost their case upto the Apex Court, therefore I do not find any substance in any of the decisions relied upon by learned senior counsel appearing for respondent no.3.

18. I therefore find no force in the submissions of learned senior counsel Mr.S.N.Soparkar to direct the Official Liquidator to file separate suit or call the witnesses concerned and examine the documents by giving opportunities of hearing/examining/cross-examining etc.

Even otherwise also this Court has, under Section 446(2) of the Companies Court, 1956, adequate power to entertain and dispose of any suit or any application by or against the company and that is established in number of cases.

19. For the discussion and reasons stated

hereinabove, Company Application No.300 of 2003 filed by the Textile Labour Association is allowed and the Official Liquidator is directed to take effective steps to evict the respondent no.3 from the premises of Vijaya Mills Ltd., Company in liquidation and the Sale Committee shall take effective steps to dispose of the land immediately upon the eviction of the respondent no.3 from the premises in question.

20. In view of the above order passed in Company Application 300 of 2003, Company Application No.205 of 1994 and Company Application No.315 of 2006 stand disposed of accordingly.

21. At this stage, Shri Mitul K. Shelat, learned advocate appearing for M/s. Amin Traders, original respondent no.3 requests the Court to stay the operation of this order for a period of two weeks so as to enable him to approach higher forum in accordance with law. However, the same request is objected by Shri

R.B.Desai, learned advocate appearing for the Official Liquidator.

22. Considering the above facts and particularly stay as continued as on date, I feel it just and proper to continue *status quo* as prevailing as on date for a period of two weeks from today.

(ANANT S. DAVE, J.)

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